

<sup>2</sup> MSTV is a nonprofit trade association of local broadcast stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

television markets. Further mandatory negotiation periods will follow for smaller television markets. If incumbent broadcasters do not reach an agreement with MSS licensees during the mandatory negotiation period, the MSS licensees may involuntarily relocate the BAS facilities, potentially causing great disruption to BAS service. *Id.*

Developments since the Commission adopted the *2 GHz Relocation Order* provide strong support for staying the mandatory negotiation deadlines. As Broadcasters have pointed out, there has been far less than expected demand for MSS service, resulting in crippling financial reverses for all three initial MSS licensees.<sup>3</sup> Further, ICO Global Communications (Holdings) Ltd., the parent company of the first expected MSS provider in the 2 GHz band, has informed the Commission that MSS service is not likely to be viable unless the Commission permits MSS licensees to offer “ancillary” terrestrial services.<sup>4</sup> In response to the ICO letter, the Cellular Telecommunications & Internet Association petitioned the Commission to reallocate the spectrum intended for MSS for advanced wireless services.<sup>5</sup>

The Commission has now commenced two proceedings to consider these developments. In *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Advanced Services (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking)*, ET Docket No. 00-258 (rel. Aug. 20, 2001), the Commission proposed to

---

<sup>3</sup> E.g., Joint Letter from NAB and MSTV to Magalie Roman Salas, Secretary, Federal Communications Commission, ET Docket No. 95-18 (January 25, 2001).

<sup>4</sup> Letter from Lawrence H. Williams to Chairman Michael K. Powell, IB Docket No. 99-81 (March 8, 2001).

<sup>5</sup> Petition for Rulemaking of the Cellular Telecommunications & Internet Association (filed May 18, 2001).

reallocate a portion of the BAS spectrum that broadcasters will vacate to provide spectrum for advanced wireless services. In *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, IB Docket No. 01-185 (rel. Aug. 17, 2001), the Commission asked whether it should permit MSS licensees to offer terrestrial wireless services in addition to satellite-based services, and if so, under what conditions.

The developments in the MSS marketplace and the Commission's recent proposals together require that the mandatory negotiation periods be stayed. Potential MSS entrants facing far lower than expected demand are not going to be in a position to commit funds to clearing BAS incumbents, particularly where they may be uncertain whether they will ever be able to launch a system operating in the 2 GHz band. ICO, the only near-term entrant, has made clear that it does not have a viable business plan unless the Commission permits it to add a terrestrial service component. Even before the Commission proposed to change the allocation and use rules for MSS, there had been few meaningful negotiations between BAS incumbents and MSS applicants, and to the best of Broadcasters' knowledge, no completed relocation agreements.

The further uncertainty created by the Commission's recent proposals certainly would discourage any MSS applicant from committing funds for band clearing. As Broadcasters pointed out in seeking reconsideration of the *2 GHz Relocation Order*, under the relocation plan, "the MSS licensees are left entirely in control of the pace of relocation."<sup>6</sup> Thus, if the current mandatory negotiation periods remain in effect, the MSS licensees have every incentive to allow the mandatory negotiation period to expire and, if they ultimately choose to go forward with

---

<sup>6</sup> *2 GHz Relocation*, Petition for Partial Reconsideration of the National Association of Broadcasters and the Association for Maximum Service Television, ET Docket No. 95-18 (Sept. 6, 2000) at 7.

construction of their systems, involuntarily relocate incumbents. That Broadcasters are not aware of any relocation agreements that have been concluded, despite more than half of the mandatory negotiation period having gone by, shows that this indeed is the MSS approach. Permitting that situation to continue would be contrary to the Commission's goal of preserving the benefits of BAS service.

Further, as Broadcasters point out in comments filed today, the proposed reallocation of part of the spectrum now intended for MSS expansion to advanced wireless services would require the Commission to change the relocation plan.<sup>7</sup> The Commission proposed to permit advance wireless use of the portion of the spectrum that, under the present relocation plan, will be the last to be cleared of incumbents. If the public interest is served by permitting advanced wireless operations in the 2 GHz band, there is no reason to delay wireless applicants' access to that spectrum for the ten or more years that it may take to complete the present relocation plan. Thus, if the Commission reallocates spectrum for advanced wireless, it is likely to alter the relocation plan as well. Incumbents which provide valuable service to the public should not be subject to mandatory negotiation deadlines when the underlying relocation plan is likely to be substantially modified.

Moreover, if advanced wireless providers are permitted to operate in the 2 GHz band, they will have to share in the relocation costs. Until the Commission provides for licensing of advanced wireless providers, relocation negotiations could not be concluded since the payment source for a portion of the relocation costs could not be identified. Thus, if the Commission

---

<sup>7</sup> Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 00258 *et al.* (filed Oct. 22, 2001).

reallocates some portion of the BAS spectrum, it should stay further negotiations until advanced wireless licensees are selected. Even if the Commission ultimately determines that it should not reallocate spectrum for advanced wireless services, the relocation negotiation deadlines should still be stayed because of the uncertainty created by the proposals for reallocation and/or flexible use of the MSS spectrum.

Because there appears to be little or no progress towards developing operational MSS systems, the stay in mandatory relocation negotiations Broadcaster seek will not harm the public. Instead, the public interest would be served by ensuring that crucial BAS services will not be jeopardized.

For the foregoing reasons, the Commission should stay all mandatory negotiation periods for relocation of BAS facilities pending the Commission's resolution of issues concerning the allocation of

spectrum at 2 GHz and the relocation plan for BAS incumbents in that band, and if the Commission reallocates a portion of the band, until the licensing of new entrants.

Respectfully submitted,

Henry L. Baumann  
Jack N. Goodman  
NATIONAL ASSOCIATION OF  
BROADCASTERS  
1771 N Street, N.W.  
Washington, D.C. 20036  
(202) 429-5430

David L. Donovan  
ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.  
1776 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
(202) 861-0344

October 22, 2001